

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Thomas Hui	Team: Team # 5	CCRB Case #: 200201680	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 03/13/2002 6:50 PM	Location of Incident: Saratoga Avenue & St. Johns Place	Precinct: 73	18 Mo. SOL 9/13/2003	EO SOL 9/13/2003	
Date/Time CV Reported Wed, 03/13/2002 8:25 PM	CV Reported At: Precinct	How CV Reported: In-person	Date/Time Received at CCRB Wed, 03/13/2002 8:25 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Patrick Cherry	08307	926676	073 PCT
2. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Peter Elste	10952	926466	073 PCT
2. POM Wayne Oliveira	28741	916355	073 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Patrick Cherry	Abuse: PO Patrick Cherry searched § 87(2)(b)	
B.POM Patrick Cherry	Discourtesy: PO Patrick Cherry spoke rudely to § 87(2)(b)	
C. An officer	Discourtesy: An officer spoke rudely to an individual.	
D.POM Patrick Cherry	Abuse: PO Patrick Cherry refused to provide his name to § 87(2)(b)	

## Synopsis

§ 87(2)(b) the complainant, alleged that PO Patrick Cherry, the subject officer, searched him (allegation A), was discourteous to him (allegation B) and refused to provide his name (allegation D) at the time of incident. § 87(2)(b) further alleged that an unidentified officer was discourteous to an unidentified individual (allegation C). § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

## Summary of Complaint

Account of § 87(2)(b)

§ 87(2)(b) the complainant, filed this complaint in-person at the 73<sup>rd</sup> Precinct in Brooklyn on 3/13/02. § 87(2)(b) stated his allegations only during his CCRB interviews; § 87(2)(b) did not make any allegations of discourtesy or abuse of authority at the time he filed his complaint at the 73<sup>rd</sup> Precinct.

§ 87(2)(b) was interviewed at the CCRB by Investigator John Anderson on 4/17/02 (see enclosure 5A). § 87(2)(b) stated that on 3/13/02 he went with his brother-in-law § 87(2)(b) to assist him in buying a vehicle at a car dealership, Popular Ford, on Avenue V and Coney Island Avenue in Brooklyn. § 87(2)(b) drove the newly purchased 1991 Ford Explorer back from the dealership, turning right onto East New York Avenue from Saratoga Avenue. § 87(2)(b) stated that he was going to his sister's home at § 87(2)(b). § 87(2)(b) was going there as she had prepared food for him because it was his birthday. At approximately 6:50 p.m., § 87(2)(b) stopped the vehicle and said goodbye to § 87(2)(b) who then got into the driver's seat and drove off. When asked why he was dropped off so far from his sister's home (5 blocks) when it was raining and he did not have an umbrella, § 87(2)(b) explained that because of the direction of the one-way streets and the route § 87(2)(b) needed to drive, he would just walk the rest of the way instead of further delaying § 87(2)(b).

§ 87(2)(b) stated that he walked across the street to use a payphone to tell his sister he was on his way to the apartment. § 87(2)(b) noted that a male was using the payphone and indicated he was going to be on it for some time. § 87(2)(b) stated he walked down East New York Avenue and turned left onto Saratoga Avenue, and crossed St. John's Place. After crossing St. John's Place, a patrol car pulled up next to him; there were three officers in the patrol car.

§ 87(2)(b) stated that PO Patrick Cherry (identified by § 87(2)(b) through photo array-see enclosure 6) asked to see his identification. The other two officers told § 87(2)(b) they were stopping him because they observed him come out of an alleyway. § 87(2)(b) denied that he came out of any alleyway; § 87(2)(b) denied he was in an adjacent empty lot as well. § 87(2)(b) stated he put his hands in the air as the officers got out of the patrol car and told him to put his arms down. § 87(2)(b) told the officers, "No, whatever it is you guys can search me. Do whatever." § 87(2)(b) stated in his interview that he felt he had nothing to hide so he let the officers search him. § 87(2)(b) could not specifically identify which of the officers searched him during the photo array-see enclosure 6). PO Cherry went into § 87(2)(b)'s pocket, searched through his wallet (allegation A), and asked him to open up his pants. § 87(2)(b) was also asked to take off his shoes. After § 87(2)(b) complied, he was then told him to put his clothes back on. One of the officers, § 87(2)(b) is not certain which one, then placed him in handcuffs. § 87(2)(b) told the officers, "This is bullshit... You are just harassing me." PO Cherry told § 87(2)(b) to shut the fuck up (allegation B), or he would be given a summons for disorderly conduct. § 87(2)(b) claimed he did not yell and he did not

see anyone else on the street when he told the officers, "This is bullshit." However, § 87(2)(b) stated that at one point while he was speaking with the officers, a pedestrian came up and asked the officers what was going on. § 87(2)(b) stated that one of the officers said to the pedestrian (unidentified male Black), "Get the fuck away if you yourself don't want to get into any trouble" (allegation C). The officers then placed § 87(2)(b) in the patrol car.

§ 87(2)(b) sat in the back of the patrol car with PO Oliveira (identified by § 87(2)(b) from photo array-see enclosure 6), with PO Cherry and PO Elste (identified by § 87(2)(b) from photo array-see enclosure 6) in the front seat, for approximately 25-30 minutes. § 87(2)(b) asked the officers why he was being arrested and he was told because he was trespassing. § 87(2)(b) stated that PO Cherry took his wallet and then performed a warrant check on him during this time. After the warrant check came back negative, § 87(2)(b) was issued summonses for § 87(2)(b).

After this, the officers took § 87(2)(b) out of the patrol car and uncuffed him. § 87(2)(b) asked PO Elste for his name so he could have some record of who stopped him. PO Cherry, who was still sitting in the patrol car, told him, "There is no need for that. Just show up for the set date and time" (allegation D). § 87(2)(b) stated he was then allowed to leave.

On 7/18/02, § 87(2)(b) was present at the CCRB to view a photo array of the officers (PO Cherry, PO Elste, PO Oliveira) present at the time of incident. § 87(2)(b) identified PO Oliveira as the officer that sat in back of the van but did not interact with him; § 87(2)(b) then stated PO Elste did not have much interaction with him at the time of incident as well. § 87(2)(b) identified PO Cherry as the subject officer that mainly spoke to him and issued him the summonses during this incident.

### **Results of Investigation**

The undersigned investigator was reassigned this case on July 1, 2002 as a result of Inv. Zoe Rizzuto's resignation from CCRB.

### **Attempts to Locate Witnesses**

Efforts were made to be in contact with § 87(2)(b) § 87(2)(b)'s brother-in-law, in this case in July 2002. The listed address given by § 87(2)(b) for § 87(2)(b) is § 87(2)(b); § 87(2)(b) confirmed that § 87(2)(b) did in fact receive his mail at that listed address. Two contact letters were sent to § 87(2)(b) but there was no response. A search of the Coles directory revealed one number listed to § 87(2)(b), but attempts to contact § 87(2)(b) found that the listed number is a fax number. By October 2002, § 87(2)(b) stated to the investigator that his sister was no longer in a relationship with § 87(2)(b) and he has no further contact information in which to reach § 87(2)(b). Although § 87(2)(b) was not present during § 87(2)(b)'s interaction with the officers, § 87(2)(b) nonetheless could not be interviewed in this case to determine § 87(2)(b)'s whereabouts prior to § 87(2)(b) being stopped by the police officers.

### **Account of PO Patrick Cherry**

PO Cherry was interviewed at the CCRB by Inv. Zoe Rizzuto on 5/31/02 (see enclosure 8).

On 5/31/02 at approximately 6:50 p.m., PO Cherry stated he was partners with PO Peter Elste and PO Wayne Oliveira. The officers were assigned to the Tracer Van and they were positioned on Saratoga Avenue, just south of Pitkin Avenue in Brooklyn, watching a location they had been informed was selling marijuana.

Although it was dark out, the evening was a clear one and there was adequate lighting. Sitting approximately 50 feet from the corner and using binoculars to observe the doorway of § 87(2)(b), PO Cherry was positioned in the front passenger seat, acting as the recorder and passing the binoculars between the driver and himself. § 87(2)(b) walking west on East New York Avenue, was observed entering the location and, under five minutes later, exiting the location. PO Cherry was unable to recall specifically who had seen him enter the building, and none of the officers were able to observe any activity that may have occurred inside the building. The location was a non-occupied building approximately four stories high with regular door locks. § 87(2)(b) was seen walking around the side of the building and down a small staircase to a rear door. They waited for him to walk about a block and a half away when, with reasonable suspicion for Trespassing, they stopped him for an explanation of his conduct.

At that point, detained at Saratoga Avenue and St. John's Place, § 87(2)(b) denied being anywhere near the building. He claimed to have been in a nearby food store, yet PO Cherry had seen him walk by the store without ever entering that store. They requested identification and § 87(2)(b) complied and handed it over, although he appeared confused and started to get angry. § 87(2)(b) retrieved his own wallet from his pocket; up until that point no one had conducted a frisk. When asked, PO Cherry was able to remember that § 87(2)(b) raised his arms and said, "Search me." Although PO Cherry was unable to recall specifically whether he searched him at that point, he was clear in his recollection that no one frisked him while the first summons was being written. Seated on the passenger side with his partners in the van, PO Cherry scanned his ID on the system to check for warrants. While he ran the check, § 87(2)(b) was being combative by saying things like, "Why are you bothering me? This is bullshit – I just got out of jail. I'm here visiting my sister." PO Cherry told § 87(2)(b) to calm down and explained that he was only getting a summons. At no point did he ever tell him, "Shut the fuck up or you'll get a Discon. Summons," nor did he hear any of his partners say so. PO Cherry recalled one passerby telling § 87(2)(b) to relax and that it was no big deal. At no point did PO Cherry tell the passerby to "get the fuck away from the van," nor did he hear his partners say so. In addition, PO Cherry never saw § 87(2)(b) unbuckle and open his pants or remove his shoes. After determining that there were no outstanding warrants, a summons was issued for § 87(2)(b).

When PO Cherry finished writing up the summons, § 87(2)(b) took his ID with one hand and the summons with the other. He then proceeded to throw the summons at PO Cherry, who was sitting in the passenger side of the van, and said something to the effect of "Fuck this." When § 87(2)(b) who had been fairly compliant up until that point, began walking away, PO Cherry picked up the summons and began to walk after him, explaining that he would get a warrant if he didn't appear in court. PO Cherry called for him to stop, but § 87(2)(b) did not stop walking until PO Cherry was directly behind him. However, after he still refused to take the summons and began saying, "This is bullshit" PO Cherry decided to issue § 87(2)(b) another summons for § 87(2)(b). For the sake of his safety and § 87(2)(b)s, PO Cherry handcuffed him and led him back to the van. At that point, PO Cherry conducted a frisk for weapons, though nothing was found. He was then placed in the vehicle and given both summonses. § 87(2)(b) was then uncuffed and allowed to leave. At no point did § 87(2)(b) ask PO Cherry for his name and shield number. PO Cherry stated his name, command and tax number are indicated on the summons, both of which PO Cherry prepared himself.

#### Account of PO Peter Elste

PO Elste was interviewed at the CCRB by Inv. Zoe Rizzuto on 6/4/02 (see enclosure 10).

PO Elste stated that he was assigned as the operator of patrol van #5746 and partners with PO Cherry and PO Oliveira on 3/13/02. PO Elste recalled that he and his partners were parked on

Saratoga Avenue at Pitkin Avenue and observing a drug-prone location. Specifically, the officers were observing the activity going in and out of the entrance to the alleyway connected to § 87(2)(b). From a block away using binoculars, the complainant, Philip § 87(2)(b) was seen heading into the location, § 87(2)(b), by both PO Elste and PO Cherry. The location was an occupied apartment building (PO Elste assumed people were living there at the time). In the 15 minutes that the officers had been watching the building they had not seen anyone else come out of it. Approximately 5 minutes after entering § 87(2)(b) came back out and, in light of the fact that it was a trespass location and § 87(2)(b) had no reason to be there, they began to follow him in the van. When asked whether he knew that § 87(2)(b) was not a resident of that building at the time that they decided to pursue him, PO Elste responded that he wouldn't know because he was not the officer that asked the questions on the stop.

The officers stopped § 87(2)(b) on the corner of Saratoga Avenue and St. John's Place; PO Cherry asked him to approach the vehicle. When § 87(2)(b) asked him why, PO Cherry stepped out of the van and asked § 87(2)(b) where he was coming from. § 87(2)(b) indicated he was at a restaurant that was next to the location. When PO Cherry asked for ID, § 87(2)(b) became irate, waving his arms and initially refused to turn it over. When PO Elste obtained the ID from § 87(2)(b) he brought it back into the van to run it through the computer system. At that point, PO Elste stated none of the officers had frisked or searched § 87(2)(b). PO Cherry remained with § 87(2)(b) on the sidewalk while PO Elste ran the warrant check. While PO Elste was running the warrant, PO Cherry eventually re-entered the vehicle on the passenger's side to prepare the summons for § 87(2)(b) while PO Oliveira sat in the backseat; § 87(2)(b) remained outside of the van unaccompanied.

§ 87(2)(b) becoming even angrier after being handed the summons, threw it back at PO Cherry and stated that it was "fucking bullshit." He began walking away, causing PO Cherry to pursue him. PO Elste testified that he remained inside the van- 10 feet from PO Cherry and § 87(2)(b) but could hear § 87(2)(b) yelling. § 87(2)(b) became more irate and as such, was handcuffed and placed in the van for both his safety and the officers' safety. Immediately before being placed in the van, PO Elste observed PO Cherry frisk § 87(2)(b). Once inside the van, PO Cherry prepared the second summons, this one for § 87(2)(b).

At no point did PO Elste ever see § 87(2)(b) put his hands up and say, "Search me" to any of the officers. PO Elste did not observe § 87(2)(b) with his shoes off and his pants open, and at no point before the first summons was issued did he observe PO Cherry frisk or search § 87(2)(b). PO Elste stated he never told § 87(2)(b) to "shut the fuck up or you'll get a Discon. Summons," nor did he hear any of his partners say so. PO Elste stated § 87(2)(b) never asked for names or shield numbers of the officers.

#### Interview PO Wayne Oliveira

PO Oliveira was interviewed at the CCRB by Inv. Zoe Rizzuto on 6/4/02 (see enclosure 12).

PO Oliveira was assigned to a Tracer Unit with PO Elste and PO Cherry on 3/13/02. PO Oliveira stated they were assigned to watch a trespass location, which was an abandoned building. Specifically, they were watching the entrance to the building's alleyway that was located on the far side of § 87(2)(b). PO Oliveira was positioned in the backseat, which prevented him from being able to observe § 87(2)(b) enter the location; instead PO Elste and PO Cherry saw it via binoculars. About a block away, the van was posted on Saratoga Avenue, just south of Pitkin Avenue; the location was § 87(2)(b). The officers knew it to be a drug-prone location via information they had received from their department. They waited under 5 minutes for § 87(2)(b) to exit the site, at that point suspicious of both

trespassing and a drug transaction “in their minds,” although PO Oliveira stated that they never saw a hand-to-hand transaction.

The officers pursued § 87(2)(b) closely in the van and eventually pulled him over on Saratoga Avenue and St John’s Place. He did not recall specifically in what manner the stop was executed that day, but he did recall that PO Cherry was primarily interacting with § 87(2)(b). PO Cherry exited the van and § 87(2)(b) seemingly calm at first, became progressively angry. A minute or two into the conversation, PO Oliveira exited the van, leaving PO Elste inside. PO Cherry, at that point, was explaining to § 87(2)(b) why he was getting the summons and telling him that he needed to stand still. PO Cherry did not conduct a frisk or a search at that time before the § 87(2)(b) summons was prepared. At no point did PO Oliveira see § 87(2)(b) with his pants open or his shoes off.

PO Oliveira did not recall whether he observed § 87(2)(b) raise his hands in the air and say, “Search me.” He could not recall whether PO Cherry had § 87(2)(b)’s ID at the time he exited the van, nor could he recall who took it to run the warrant check, or if there even was a warrant check. However, he did remember PO Cherry as the officer who prepared the first summons, although he could not recall exactly where it was prepared.

After PO Cherry attempted to hand the summons to § 87(2)(b) on the sidewalk, § 87(2)(b) took his ID but threw the summons back at PO Cherry, who at that point was walking back to the van. § 87(2)(b) then began walking away and, 10-15 feet away from the van, both PO Oliveira and PO Cherry caught up to him. PO Cherry told him he was going to get another summons for § 87(2)(b) and, when § 87(2)(b) continued flailing his arms and acting in an excited manner, he was placed in handcuffs and put in the van. PO Oliveira stated § 87(2)(b) did not resist being handcuffed. It did not take long for PO Cherry to prepare the second summons once inside the van, sitting in the passenger’s seat, during which time there was no conversation between § 87(2)(b) and PO Oliveira who were approximately 3 feet away from one another. PO Oliveira, standing directly outside the van in between the doors, could not recall whether PO Elste remained in the driver’s seat the entire time. PO Oliveira did not remember whether § 87(2)(b) ever asked for the officers’ names or shield numbers once inside the van. PO Oliveira stated he never told § 87(2)(b) to “shut the fuck up”, nor did he hear any of his partners say so.

### Police Records

Records were requested from the 73<sup>rd</sup> Precinct. The roll call confirmed the fact that PO Cherry, PO Elste and PO Oliveira were partners and assigned to the Tracer Van at the time of incident (see enclosure 13). The sprint printout index did not reveal any 911 calls made relating to this incident (see enclosure 17). In addition, it was found that § 87(2)(b) was issued summonses for § 87(2)(a) 160.50 (see enclosure 14, 15). § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

PO Cherry had one prior CCRB case in which the allegations against PO Cherry were unsubstantiated.

§ 87(2)(b)

## Conclusions and Recommendations

### Undisputed Facts

The undisputed facts disclosed during the investigation include PO Cherry, PO Elste and PO Oliveira being the only officers present at the time of incident and § 87(2)(b) being issued summonses for § 87(2)(a) 160.50 after being stopped by the officers.

#### Subject Officer Identification

During the photo array conducted with the complainant, § 87(2)(b) stated that both PO Oliveira and PO Elste did not have much interaction with him at the time of incident. § 87(2)(b) identified PO Cherry as the subject officer in this case through the photo array; § 87(2)(b) noted that PO Cherry was the officer that mainly interacted with him and issued him the summonses. Although § 87(2)(b) could not identify the subject officer regarding the allegation of being searched, it can be seen that based upon both § 87(2)(b)s and PO Cherry's testimonies that PO Cherry was indeed the officer that questioned § 87(2)(b) frisked § 87(2)(b) and also issued § 87(2)(b) the summonses. § 87(2)(g)

§ 87(2)(b) could not identify the other officer being discourteous to an unidentified pedestrian as the pedestrian encountered § 87(2)(b) and the officers at the time of incident.

#### Credibility Analysis

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

According to PO Cherry and PO Elste, they noted § 87(2)(b) coming out from an alleyway they were observing to be a drug-prone location on § 87(2)(b). Although both officers could not determine whether the house was currently occupied or not, they were sure that § 87(2)(b) had walked out from the wooden-fence door to the side of § 87(2)(b); it is for this reason that PO Cherry had issued § 87(2)(b) a summons for § 87(2)(a) 160.50 § 87(2)(g)

**Allegations:**

- A. Abuse of Authority: PO Patrick Cherry searched § 87(2)(b)**
- B. Discourtesy: PO Patrick Cherry spoke rudely to § 87(2)(b)**
- C. Discourtesy: An officer spoke rudely to an individual.**
- D. Abuse of Authority: PO Patrick Cherry refused to provide his name to § 87(2)(b)**

§ 87(2)(b) stated in his account that an officer later identified as PO Cherry searched through his wallet and he was told to open his pants and take off his shoes at that time (allegation A). After this, § 87(2)(b) stated that he was handcuffed, and he became upset because he was handcuffed for no apparent reason. § 87(2)(b) then alleged that PO Cherry cursed at him in return (allegation B). According to PO Cherry's testimony, § 87(2)(b) was never searched at all and he never cursed at § 87(2)(b). PO Cherry noted that § 87(2)(b) was only patted down after he was handcuffed and taken inside the van after he allegedly threw the § 87(2)(a) 160.50 summons at PO Cherry. In other words, PO Cherry conveyed that he had no intentions speaking with § 87(2)(b) further or issuing § 87(2)(b) a summons for § 87(2)(a) 160.50. § 87(2)(b) had § 87(2)(b) not become irate and begin to yell and use profanity and throw the summons at PO Cherry. § 87(2)(g)

§ 87(2)(b) also alleged that PO Cherry refused to provide his name and other officers' names after PO Cherry issued the § 87(2)(a) 160.50 summons to him (allegation D). According to PO Cherry, he told § 87(2)(b) that his name, command and tax number were located on the two summonses he just received, even though § 87(2)(b) never asked for his name and shield number in the first place. According to PO Elste, § 87(2)(b) never asked any officers for their names or shield numbers; according to PO Oliveira, he could not recall if § 87(2)(b) asked for their identification during this incident. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:



Reviewed by:

Date: